

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4282 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? No

2. To be referred to the Reporter or not? No :

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No

4. Whether this case involves a substantial question :
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No :

JASMIN S SHAH

Versus

POST GRADUATION DIRECTOR

Appearance:

MR RE VARIAVA for Petitioner
M/S ANAND ADVOCATES for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 25/06/1999

C.A.V. JUDGEMENT

1. The prayer of the petitioner in this writ petition is for declaration that he is entitled to Post Graduate Registration in Radiology with further prayer that the respondents be directed to admit the petitioner in Post Graduate Course in Radiology.

2. Brief facts giving rise to this petition are as under :

The petitioner passed his M.B.B.S. Course from P.S. Medical College, Karamsad under Sardar Patel University in May 1995 and completed one year inter-ship

in May 1996 in Sardar Patel University. There is no Post Graduate Course in Sardar Patel university. The petitioner was appointed as Tutor in Radiology in the Government Medical College, namely, B.J.Medical College, Ahmedabad. There was condition in the petitioner's appointment that he will have to give undertaking for Post Graduate Registration in the concerned subject before joining the assignment. Undertaking was to be obtained by the concerned Dean of the Medical College. Where no Post Graduate Course is available the candidate will be exempted from the Post Graduate Registration in that subject until P.G. Course starts in that subject. The petitioner with a view to get himself registered for Post Graduate Course obtained eligibility certificate from Gujarat University on 5.6.1997 and applied for Post Graduate Registration on 9.5.1997. A supplementary application Annexure : E was also submitted by the petitioner, but he was not given P.G.Registration despite availability of seat. A representation was made by the petitioner to the State Government. It is also said that Dr.Gautam Makwana, P.G.Teacher in Radiology, who is member of Post Graduate Admission Committee wrote letter to the Registrar of Gujarat University on 27.2.1998 that one vacancy was available under him. Despite all these and no objection from Shri Makwana the petitioner was not offered P.G.Registration in Radiology due to adamant attitude of the respondents. Hence this writ petition.

3. In the Counter Affidavit of Dr.C.K.Purohit, Director, P.G.Studies and Research, it has been deposed that the petitioner's merit list was at No.323 whereas P.G.Admission in Radiology closed at Merit No.103, hence he could not be given registration and admission in the subject in P.G.Course. It is also deposed in the Counter Affidavit that since there was no vacancy and no vacant seat was available and further because the merit of the petitioner was lower he could not be given registration in P.G.Course in Radiology. Details have been given explaining why there was no vacancy for admission. It has also been deposed in the counter Affidavit that Dr.Gautam Makwana was not appointed member of the P.G.Admission Committee of B.J.Medical College for the year 1998 admissions and that his letter showing vacancy was ineffective. A short counter Affidavit was filed by Dr.M.H.Makwana, Chairman, P.G.Admission Committee in which also it is deposed that Dr.Gautam Makwana was not a member of P.G.Admission Committee and he had no vacant seat for January, 1998 admission.

4. After hearing the learned Counsel for the parties and examining the rules for admission, various counter

Affidavits and Affidavits on record as well as other material on record I am of the view that there is no merit in this writ petition. It is incorrect to say that because of adamant attitude of the respondent that the petitioner could not get registration in P.G.Course in Radiology. Annexure : A to the writ petition shows that the petitioner was appointed as Tutor in Radiology on 30.9.1997. There was condition in the appointment letter that the selected candidate shall have to give undertaking for P.G.Registration in the concerned subject and without obtaining undertaking the candidate shall not be permitted to take over charge. Annexure : B is Government Resolution dated 7.5.1981 in which period for such undertaking was fixed to be three months from the date of joining of the candidate on the post of Tutor. Thus, from this Government Resolution initial rigour was diluted and selected candidate was required to obtain registration within three months from the date of joining on the post of Tutor. However, mere application for registration is not enough. There are two bodies, one is the State Government and the other is University. The State Government may be laying down certain norms and conditions but the admission is to be given by the University according to prevailant rules. The rules for admission clearly lay down that the admission has to be given only in accordance with merit. A person having lower merit cannot be given preference over the candidate having higher merit. There can be no registration or admission to the Post Graduate Course unless vacant seat is available. From the counter Affidavits of Dr.M.H. Makwana and Dr.C.K.Purohit it is abundantly clear that the petitioner applied for P.G.Registration for January 1998 batch and at that time there was no vacancy. Admission to Radiology course closed at merit No.103. There were total seven seats and the details have been given in Para : 2 of the Counter Affidavit of Dr.M.H.Makwana. Since merit of the petitioner was far below he could not be admitted in Radiology branch. He was offered available seats in M.D.(PSM), M.D.(Physiology), M.D.(Pharmacy) and M.D.(Anatomy) according to his merit, but he declined to accept. As such he could not be admitted in the Batch of January, 1998. He also could not be admitted in the Batch of July, 1998 because of his lower merit and so he withdrew his application form. Regarding the letter of Dr.Gautam Makwana it is deposed in the two counter Affidavits that he was not a member of P.G.Admission Committee and he had no vacant seat. Consequently no weightage can be given to the letter of Dr.Gautam Makwana (Annexure : G) dated 27.2.1998. The details of vacant seats have been given with certainty in the counter Affidavit of Dr.C.K.Purohit

and Dr.M.H.Makwana. In face of these counter Affidavits based on specific data casual mention of Dr.Gautam Makwana in Annexure : G that one seat was available under him and he had no objection if eligible candidate is registered under him cannot be preferred. In Para : 4.2 of the counter Affidavit of Dr.C.K.Purohit it is mentioned that the merit of the petitioner was at Sr.No.323. There were seven seats including one super numerary at B.J.Medical College which were filled in order of merit by Sr.No.78, 80, 97, 99, 102, ST-250 and 103. In Para : 4.4 of this counter Affidavit it is admitted that undertaking for P.G.Registration in the concerned subject is a condition precedent for appointment as Tutor, but admission to P.G.Course is in no way connected with the appointment as Tutor. Since the appointing authority is State Government whereas the admission is given as per rules of the Gujarat University as per merit of the petitioner he could not get admission and registration in P.G.Course for January 1998 Batch. In this Counter Affidavit doubt has been created on eligibility certificate, receipt, etc. because dates are not available on these documents filed by the petitioner. The representation of the petitioner, Annexure : E, according to this counter Affidavit, related to admission for the year 1997 and not for admission for January 1998 Batch. Hence this representation, according to the respondents, is irrelevant. In Para : 4.9 of this Counter Affidavit it has been explained how Dr.Gautam Makwana had no vacant seat with him and it has been further deposed that Dr.Gautam Makwana was not appointed as member of P.G.Admission Committee for the year 1998 admission.

In Para : 6.2 of this Counter Affidavit it is deposed that for January 1998 Batch at B.J.Medical College seven seats were declared which included one for open category for Surat Medical College, two for open category candidates and four for reserved candidates which included one Scheduled Tribe and three S.E.B.C. candidates. Surat seat is to be filled up by Surat Medical College under University Rules. Remaining six seats are to be filled up by local interview. Further when reserved category seat is filled Rule : 5.4 would operate to creat super-numerary seats and if reserved category seat is not filled up Rule : 5.5 would operate through which unfilled reserved seat could be converted into open category seats. During interview only one reserved seat was filled up, hence only one super-numerary seat was created. Three unfilled reserved seats were converted into open category seats. Thus, in the interview total seven seats i.e. one reserved seat, one super-numerary seat, two open category seats and

three reserved seats converted into open category were filled up and no seat remained vacant. Surat seat was filled up later by the Surat Medical College. In this way not a single seat fell vacant in the Batch of January, 1998. Similar indication is found in Para : 6.4 of the Counter Affidavit.

5. In view of these two counter Affidavits it is clear that no seat was vacant for registering the petitioner to P.G.Course in Radiology. The merit was lower and for this reason also he could not be considered. The assistance from the letter of Dr.Gautam Makwana was unsuccessfully sought by the petitioner inasmuch as in the first place Dr.Gautam Makwana was not member of Admission Committee nor he had vacant seat under him. This fact is fully clarified from these two counter Affidavits referred to earlier. If the seats were not available and the merit of the petitioner was lower he could not be offered registration. The registration for P.G.Course is not hollow formality. Unless seats were available no registration could be granted for P.G.Course. Even from Para : 7 of the petition it appears that the case of the petitioner is that he has not been given P.G.Registration despite there being availability of the seat. This stand of the petitioner corroborates stands of the respondent that in absence of availability of the seat registration to P.G.Course could not be granted by the respondents.

6. For the reasons given above it is difficult to accept the contention that the action of the respondent has been arbitrary or contrary to the rules of Gujarat University or in violation of Government Resolution. There is no merit in this writ petition which is bound to fail.

The writ petition is accordingly dismissed. No order as to costs.

sd/-

Date : June 25 ,1999 (D. C. Srivastav, J.)

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